IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 961 OF 1997

Rail Child Sanstha, Kalyan & anr.... Petitioner

versus

Jaywant Karbhari Aher & ors..... Respondent.

Shri A.A.Garge i/b R.S.Apte for the petitioner.
Shri D.K.Chinchalikar AGP for respondents 2 and 3.

CORAM; A.P. DESHPANDE, J.
DATED; 26TH FEBRUARY, 2007

P.C.;

1. This petition is directed against the judgment and order passed by the Presiding Officer, School Tribunal, granting re-instatement with full backwages to the respondent no.1 after finding the termination of respondent no.1 was illegal. While granting rule, this court has granted interim stay in terms of prayer clause (b), which is in operation till today. By granting interim relief the execution operation and implementation of the judgment and order passed by the school Tribunal has been stayed.

2. The respondent no.1 was appointed on 23-1-1993 in the school administered and managed by the petitioner and the first respondent was terminated from service on 23-4-1995. It is the case of the petitioner that

the said appointment of respondent no.1 was not an appointment made under section 5 of the Act but the respondent no.1 was appointed thrice in leave vacancy and hence it being a temporary appointment, respondent no.1 cannot claim deemed confirmation as is envisaged by section 5(2) of the Act.

3. The learned counsel for the petitioner submits that since the year 1997 the respondent no.1 is gainfully employed and is in continuous service in one Marusandi School. To substantiate the said fact a communication from the Block Development Officer, Panchayat Samithi, Kalyan dated 15-11-2006 is placed on record along with an affidavit in that regard filed by the petitioner. It is submitted by the learned counsel that as the respondent no.1 is in continuous service from 1997 till date in some other school, he has assumed confirmation and permanency in service and thus is not interested in opposing the present writ petition. The respondent no.1 has not filed any affidavit in reply to the petition, nor is he represented by any counsel. With a view to ascertain the correctness of the statement contained in the communication dated 15-11-2006, I directed the learned AGP to keep present the Block Development Officer who has certified that the respondent is in continuous service since 12-3-1997. The Block Development Officer is present in the court and the learned AGP

submits that the respondent no.1 is in continuous service since the year 1997 till date and is now permanent employee of the said school. This statement made by AGP on instructions given by the officer, who is present in the court. In this view of the matter, I proceed to allow the writ petition. The impugned judgment and order passed by the tribunal dated 10-9-1996 is quashed and set aside. Rule is made absolute in above terms. There shall be no orders as to costs.

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